

To: Don Waye/DC/USEPA/US@EPA[]
Cc: CN=Dov Weitman/OU=DC/O=USEPA/C=US@EPA;CN=Lee Schroer/OU=DC/O=USEPA/C=US@EPA[]; N=Lee Schroer/OU=DC/O=USEPA/C=US@EPA[]
From: CN=Steve Sweeney/OU=DC/O=USEPA/C=US
Sent: Thur 11/3/2011 4:31:40 PM
Subject: Re: Attn: Steve - Update on Oregon CZARA Lawsuit Settlement Progress/Delays

Don,

Ex. 5 - Attorney Client

Thanks again for the update,

Steve

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From: Don Waye/DC/USEPA/US
To: Steve Sweeney/DC/USEPA/US@EPA
Cc: Dov Weitman/DC/USEPA/US@EPA
Date: 11/03/2011 09:17 AM
Subject: Attn: Steve - Update on Oregon CZARA Lawsuit Settlement Progress/Delays

Steve,

I need to keep you apprised of the latest information that I am hearing with regard to the subject line above. I participated in a feds-only call yesterday to prepare us for a call on this topic with OR DEQ next Tuesday, 11/8.

First the good news: Oregon is moving forward with a framework and process for adopting implementation-ready TMDLs that is likely to allow them to meet our conditions for approval of its CZARA program.

The bad news is that there are a lot of issues and delays in this forward progress. Region 10's Dave Powers is front and center on keeping up with all the issues and serving as a vital liaison between EPA, OR DEQ, OR DOF and Nina Bell--the plaintiff in the lawsuit. Dave continues to meet regularly with Nina and OR DEQ's Gene Foster to keep things moving forward, discuss obstacles and options, and to strategize. There are a host of other players, of course, but these 3 (Dave, Nina and Gene) are central.

Predictably, OR DOF would like to avoid the onset of these implementation-ready TMDLs, which would shift some power and authority in forested lands toward OR DEQ and serve as an end-run to the current relatively lax state forest rules wherever TMDLs are required. OR DOF is now proposing rule changes

that should make a real (positive) difference in some, but not all critical areas. For example, a major piece of the proposed rule is to establish a 100 foot "no-touch" buffer around all streams through forested lands. (This is supported by OR DOF's own RipStream temperature monitoring efforts.) OR DEQ is contemplating a wait-and-see posture before pushing full-tilt toward the agreed-upon settlement plan. Regardless, DEQ is already veering off-track from the schedule of milestones spelled out in our settlement agreement.

Now for potential additional good news: Since the overall developments are moving in a positive direction, Dave Powers reports that Nina Bell would be amenable to revising the settlement agreement if it results in moving things from an uncertain path to a more solid and environmentally positive path. From a strategy standpoint, Nina prefers to keep the pressure on Oregon and not reveal her willingness to accept a revised agreement. Everyone on today's call today agrees with this strategy. Dave Powers raised this possibility of revising the settlement agreement, given Nina's willingness to agree to this. He and Jayne Carlin asked all of us feds what we felt about that idea. I told them I would run it by our management and OGC. Hence this email.

I do think the idea of revising the timelines--not the outcomes--in the existing agreement has a lot of merit, and could prevent us from the specter of making a forced (and likely political) call in 2013, as the agreement now requires. But it matters more what our management (possibly under new management in 2013) and OGC think. At this point, I'm just alerting you to this new wrinkle and would like to understand OGC's stance on the idea of eventually revisiting the schedule in the settlement agreement.

Thanks.

Don Waye
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Nonpoint Source Control Branch (OWOW/AWPD)

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